

Remarks

Currently pending in the application are Claims 1-6, wherein Claims 1-6 are rejected.

Applicant has amended Claims 1 and 3 to state that “the protolamellar aqueous surfactant further comprises from about 1% to about 10% by weight electrolyte” for reasons of clarification. Support for the amendment is found on page 5 paragraph 1 of Applicant’s published PCT application, as well as Claims 4-6 as originally filed. Applicant makes this amendment for reasons of clarification and without prejudice.

In view of the above amendments to Claims 1 and 3, and the following remarks, Applicant respectfully requests reconsideration by the Examiner, and advancement of the application to allowance.

1. **Rejection Under 35 U.S.C. § 102(b)**

Claims 1-3 stand rejected under 35 U.S.C. § 102(b) as anticipated by Henkel KGAA, FR 2,759,607A, as evidenced by Derwent Abstract AN 1998-323821 (“Henkel”), and alternatively by Lion Corp, DE 36 17 306A as evidenced by Derwent Abstract AN 1986-320274 (“Lion”).

Applicant has amended independent Claims 1 and 3 to clarify that the protolamellar aqueous surfactant further comprises from about 1% to about 10% by weight electrolyte. Upon reviewing the Derwent Abstract AN 1998-323821, Applicant respectfully asserts that Henkel does not fairly suggest the presence of an electrolyte.

Upon reviewing the Derwent Abstract AN 1986-320274, Applicant asserts that Lion fails to disclose the protolamellar aqueous surfactants of Claims 1-3. In particular, the Derwent Abstract of Lion neither discloses the phase nor defines the wetting agent as a surfactant. Applicant asserts that the wetting agent may be an alcohol, which would not work to form a

liquid crystalline phase. Accordingly, Applicant's Claims 1-3, which are directed toward a protolamellar aqueous surfactant are not anticipated by the Derwent Abstract of Lion.

Applicant therefore respectfully requests that the rejection to Claims 1-3 under 35 U.S.C. § 102(b) be withdrawn.

2. Rejection Under 35 U.S.C. § 103(a)

Claims 3-6 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Pat. No. 4,486,334 ("Horiuchi") in view of U.S. Pat. No. 5,952,285 ("Hawkins") and AU 16 451/95A ("Albright").

Without wishing to be bound by the theory, Applicant believes that the presence of electrolyte results in the inventive composition's ability to form a clear composition having suspended particles utilizing a lesser weight percent of surfactant than was previously required.

The Office Action admits that Horiuchi discloses a composition having from 30 to 50 wt% surfactant and does not disclose the addition of an electrolyte. Office Action page 6 paragraphs 2 and 3. Hawkins discloses the use of "sufficient dissolved electrolyte", and exemplifies the use of 1 wt% sodium chloride. Hawkins Col. 7, lines 62-65 and Office Action page 2 paragraph 4. Accordingly, the Office Action suggests that the combination of Horiuchi and Hawkins renders Applicant's claimed invention obvious.

Applicant, however, respectfully submits that there is no motivation to use the disclosure of Hawkins in combination with Horiuchi to make Applicant's claimed invention. In particular, Hawkins discloses the use of "sufficient dissolved electrolyte to form a substantially Newtonian or optically isotropic liquid." Hawkins, Abst. Accordingly, Hawkins discloses the use of the electrolyte to break-down structure. Therefore, one of ordinary skill in the art would not have

been motivated to combine the disclosure in Hawkins with the disclosure in Horiuchi to build structure and form a protolamellar surfactant.

Moreover, with respect to Claims 4, 5, and 6, Applicant respectfully submits that even if one of ordinary skill were motivated to combine Horiuchi and Hawkins, the combination would not work to make Applicant's claimed invention. In particular, Applicant asserts that a combination in view of Horiuchi and Hawkins would comprise from 30 to 50 wt% surfactant and at most 1% electrolyte. This composition would not work to make Applicant's claimed composition or process because high viscosity liquid crystalline phases exist at the higher surfactant concentration, and minor amounts of electrolyte will not alter the phase behavior. Any other interpretation of the combination of Horiuchi and Hawkins would have to be based on impermissible hindsight reconstruction.

Applicant asserts that the disclosure of Albright cannot be combined with Hawkins, because Albright discloses that "it is an object of [the] invention to provide low viscosity pearlescent concentrates ... which preferably do not require the addition of a viscosity modifier...". Albright page 2, lines 3-7. Accordingly, the disclosure of Albright teaches away from the addition of electrolyte and cannot be combined with either Horiuchi or Hawkins to fairly suggest Applicant's claimed invention.

Additionally, with respect to Claims 4, 5, and 6, Albright discloses that the surfactant is present in an amount of from 60 to 80 weight percent. Accordingly, Applicant asserts that a combination in view of Albright and Hawkins would comprise from 60 to 80 wt% surfactant and at most 1% electrolyte. This composition would not work to make Applicant's claimed composition or process because high viscosity liquid crystalline phases exist at the higher surfactant concentration, and minor amounts of electrolyte will not alter the phase behavior. Any

other interpretation of the combination of Albright and Hawkins would have to be based on impermissible hindsight reconstruction.

Applicant therefore respectfully requests that the rejection to Claims 3-6 under 35 U.S.C. § 103(a) be withdrawn.

3. Request for Continued Examination

Applicant submits herewith a request for continued examination, and respectfully requests reconsideration of the pending claims.

Conclusion

In view of the foregoing remarks, Applicant respectfully submits that the application is now in condition for allowance, and respectfully requests issuance of a Notice of Allowance directed towards the pending claims.

Should any fee be due in connection with the filing of this document, the Commissioner for Patents is hereby authorized to deduct said fee from Deposit Account No. 07-0153.

Please date stamp and return the enclosed postcard to acknowledge receipt of this material.

Respectfully submitted,


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